HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.3195 OF 2014

ORDER:

Heard Ms.Padmavathi, learned counsel for the petitioners and the Government Pleader.

The petitioners pray for Mandamus declaring the inclusion of agricultural lands in Survey Nos.304/1, 243/2, 244/2, 258A/3A, 258A/4A and 258B/IA of Amakathadu Village of Krishnagiri Mandal, Kurnool District in assigned lands by 3rd respondent through letter No.R.Dis.(E2)/2845/2010 dated 17.01.2012 addressed to the 5th respondent and the endorsement dated 12.11.2013 of 5th respondent refusing to entertain documents for registration or furnish market value, as illegal without jurisdiction and unconstitutional. The petitioners further pray for consequential direction to 5th respondent to receive and register the documents presented for registration for the petition lands without reference to the letter dated 17.01.2012.

The petitioners claim to be absolute owners and possessors of Survey Nos.304/1, 243/2, 244/2, 258A/3A, 258A/4A and 258B/IA of Amakathadu Village of Krishnagiri Mandal (for short 'the petition lands'). The petitioners through registered sale deeds dated 08.05.1998, 16.12.2002 and 09.06.2003 have purchased the petition lands. The vendors of petitioners were shown as absolute owners and possessors of petition lands, their names were included in 1B register, the respondents issued pattadar pass book/title deed in favour of the vendors of petitioners and upon purchase by the petitioners pattadar passbooks/title deeds were issued. It is contextual to refer to the origin of title stated by the petitioners both through the additional affidavit dated 18.12.2014 and additional documents filed therewith. According to petitioners, the petition lands were and are not assigned or Government land, for the Register of Holdings for Survey No.304/1 of Amakathadu Village and registered sale deeds dated 05.07.1945 (document No.1200/1945), 17.07.1944 (document No.1338/1944) for Survey Nos.243/2, 244/2, 258A/3A, 258A/4A and 258B/1A of Amakathadu Village demonstrate individual's right and title to petition lands. Further, the order of this Court in Writ petition No.29048 of 2009 and the supplementary Award No.3/2013 dated 02.07.2013 passed in respect of Survey Nos.304/2, 258/A3B etc. establishes the case of petitioners for petition land as patta land. A portion of the Survey numbers covered in the writ petition was acquired for the purpose of widening NH-7 from 203 KM to 293 KM. Through the supplementary award, the claim of petitioners as exclusive owners of petition land is accepted.

The case of petitioners is that the petition lands are not assigned lands, more particularly, with a condition of non-alienability, secondly that the earliest transactions regarding the petition lands are prior to 1954 and the sale and purchase by private parties belies the case of Government. The respondents by reference to classification of these survey numbers as Government land dots(…….) cannot presume the petition lands as assigned lands or Government lands and the petition lands can not be included in the prohibitory list for the purpose of Section 22-A of the Registration Act (for short 'the Act'). The petitioners place strong reliance upon the order of this Court in W.P.No.29048 of 2009 and the finding recorded by the competent authority and Joint Collector in Supplementary Award No 3/2013 dated 02.07.2013 to contend that except the RSR all other revenue records show that these survey numbers are patta lands. The relevant portion in the supplementary award reads as follows:

> "The basis for which the above land is treated as Government Land and notified U/s.3-D of the N.H. Act, 1956 is merely basing on the ….. doted entries in the R.S.R. The other revenue records would show that they are patta lands. As per the judgment of the A.P. Hon'ble High Court, Hyderabad 6in W.P.No.29048/2009 dated 30.11.2011, the Hon'ble Judge has observed that the entries in the R.S.R. shall not be solely guided to determine the classification of the lands. In this case the other revenue records would show that all these lands are patta lands and the Pattadar Pass Book and Title Deed were also issued for these lands treating them as patta lands. In the circumstances, it is considered to recall the Supplementary Award passed in Award No.1/2013 dated 10.06.2013 and Award No.1(A)/2013 dated 24.06.2013 and accordingly the Supplementary Award passed earlier is now recalled and the following Supplementary Award is passed treating the lands in question as private land keeping in view the directions of the Hon'ble High Court in W.P.No.29048/2009 dated 30.11.2011 and basing on the records and documents produced by the petitioners."

From the above circumstances, the petitioners contend that inclusion of the petition lands in prohibitory list virtually amounts to deprivation of proprietary right of the petitioners to enjoy and alienate as absolute owners, the same cannot be done except in accordance with law and if the communication is given an undue importance by the 5th respondent, the same amounts to violation of Article 300-A of the Constitution of India.

Counter affidavit is filed by the 4th respondent for himself and on behalf of 3rd respondent. The reply of 4th respondent is that the petition lands have been included in assigned lands list and communicated to the 5th respondent as required under Section 5(1) of the A.P. Assigned Lands (Prohibition of Transfers) Act 1977 and no exception can be taken to such inclusion. The admitted basis for inclusion of petition lands in prohibitory list is the description of petition lands in RSR as Government land in pattadar column as dots(……). Since the names of private parties are not included in Re-Settlement Register, the petition lands are treated as 'assessed waste lands'. The reply of 3rd and 4th respondents is brief and totally untenable. The 4th respondent admittedly has not examined the relevant revenue records vis-à-vis the petition lands. To take up illustratively, Survey No.304 is included in the Register of Holdings as early as 1944. The purpose of maintenance of Register Holding cannot be lost sight of. Likewise, the other survey numbers are subject matter of sale and purchase in 1944 and 1945. Admittedly, the vendors of petitioners have been in possession and enjoyment of petition lands from the respective sale deeds till the properties have been sold under registered sale deeds as stated supra to petitioners. To firstly consider the petition lands as covered by the prohibition contained in Act IX of 1977, the burden is on 3rd and 4th respondents to show that the lands included in the prohibitory list are assigned lands with the condition of non-alienability. Secondly, even to attract one or the other contingencies covered by Section 22-A of the Act, the requirements of each one of these circumstances under Section 22-A of the Act are specific and categorical and admittedly the 3rd and 4th respondents failed to bring the case within the prohibition covered by Section 22-A of the Act. Further, this Court through order dated 30.11.2011 in W.P.No.29048 of 2009 specifically directed the respondents not to go by description of petition lands as Government dots (….) while considering the claims of petitioners for payment of compensation for acquired lands for road widening of NH-7 as stated above. The Joint Collector-cum-Competent Authority after verifying the revenue record, has recorded a finding that the petition lands are patta lands and the solitary entry in RSR cannot be put against the petitioners. For all the above reasons and from the documentary evidence available on record, this Court is of the view that inclusion of petition lands in prohibitory list maintained either under Section 22-A of the Act or for the purpose of Act IX of 1977 is illegal, unauthorized and arbitrary. Consequently, the said inclusion by 3rd respondent insofar as the petition lands is concerned, is set aside.

The petitioners are given liberty to present documents for registration for petition lands before the 5th respondent. As and when such documents are presented for registration, the 5th respondent receives the documents and considers the same for registration without reference to the letter dated 17.01.2012 insofar as the petition lands are concerned and pass appropriate orders for registration subject to such documents being compliant of Stamp Act.

The writ petition is allowed. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:27.03.2015

Stp